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HOUSE OF REPRESENTATIVES.

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TARIFF OF DUTIES IN THE PORTS OF MEXICO.

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MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES,

IN ANSWER TO

*A resolution of the House of December 18, 1848, relative to the establishment of a tariff of duties in the ports of Mexico, and the appropriation of the same.*

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JANUARY 3, 1849.

Referred to a Select Committee, and ordered to be printed.

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*To the House of Representatives of the United States:*

In answer to the resolution of the House of Representatives of the 18th of December, 1848, requesting information, "under what law or provision of the constitution, or by what other authority," the Secretary of the Treasury, with the "sanction and approval" of the President, established "a tariff of duties in the ports of the Mexican republic, during the war with Mexico;" and "by what legal, constitutional, or other authority," the "revenue thus derived," was appropriated to "the support of the army in Mexico," I refer the House to my annual message of the 7th of December, 1847; to my message to the Senate of the 10th of February, 1848, responding to a call of that body, a copy of which is herewith communicated; and to my message to the House of Representatives of the 24th of July, 1848, responding to a call of that House. The resolution assumes that the Secretary of the Treasury "established a tariff of duties in the ports of the Mexican Republic." The contributions collected in this mode, were not established by the Se-

cretary of the Treasury, but by a military order issued by the President through the War and Navy Departments. For his information the President directed the Secretary of the Treasury to prepare and report to him, a scale of duties. That report was made, and the President's military order of the 31st of March, 1847, was based upon it. The documents communicated to Congress with my annual message of December, 1847, show the true character of that order.

The authority under which military contributions were exacted and collected from the enemy and applied to the support of our army, during the war with Mexico, was stated in the several messages referred to. In the first of these messages, I informed Congress, that "on the thirty-first day of March last, I caused an order to be issued to our military and naval commanders to levy and collect a military contribution upon all vessels and merchandise which might enter any of the ports of Mexico in our military occupation, and to apply such contributions towards defraying the expenses of the war. By virtue of the right of conquest and the laws of war, the conqueror, consulting his own safety or convenience, may either exclude foreign commerce altogether from all such ports, or permit it upon such terms and conditions as he may prescribe. Before the principal ports of Mexico were blockaded by our navy, the revenue derived from import duties, under the laws of Mexico, was paid into the Mexican treasury. After these ports had fallen into our military possession, the blockade was raised, and commerce with them permitted upon prescribed terms and conditions. They were opened to the trade of all nations upon the payment of duties more moderate in their amount than those which had been previously levied by Mexico; and the revenue, which was formerly paid into the Mexican treasury, was directed to be collected by our military and naval officers, and applied to the use of our army and navy. Care was taken that the officers, soldiers and sailors of our army and navy, should be exempted from the operations of the order; and as the merchandise imported, upon which the order operated, must be consumed by Mexican citizens, the contributions exacted were, in effect, the seizure of the public revenues of Mexico, and the application of them to our own use. In directing this measure, the object was to compel the enemy to contribute, as far as practicable, towards the expenses of the war."

It was also stated in that message, that "measures have recently been adopted by which the internal as well as the external revenues of Mexico, in all places in our military occupation, will be seized and appropriated to the use of our army and navy. The policy of levying upon the enemy contributions in every form, consistently with the laws of nations, which it may be practicable for our military commanders to adopt, should, in my judgment, be rigidly enforced; and orders to this effect have accordingly been given. By such a policy, at the same time that our own treasury will be relieved from a heavy drain, the Mexican people will be made to feel the burdens of the war, and, consulting their own in-

terests, may be induced the more readily to require their rulers to accede to a just peace."

In the same message, I informed Congress that the amount of the "loan" which would be required for the further prosecution of the war, might be "reduced by whatever amount of expenditures can be saved by military contributions collected in Mexico;" and that "the most rigorous measures for the augmentation of these contributions have been directed, and a very considerable sum is expected from that source." The Secretary of the Treasury, in his annual report of that year, in making his estimate of the amount of loan which would probably be required, reduced the sum, in consideration of the amount which would probably be derived from these contributions, and Congress authorized the loan upon this reduced estimate.

In the message of the tenth of February, 1848, to the Senate, it was stated that "no principle is better established than that a nation at war has the right of shifting the burden off itself, and imposing it upon the enemy by exacting military contributions. The mode of making such exactions must be left to the discretion of the conqueror, but it should be exercised in a manner conformable to the rules of civilized warfare. The right to levy these contributions is essential to the successful prosecution of war in an enemy's country, and the practice of nations has been in accordance with this principle. It is as clearly necessary as the right to fight battles, and its exercise is often essential to the subsistence of the army. Entertaining no doubt that the military right to exclude commerce altogether from the ports of the enemy in our military occupation, included the minor right of admitting it under prescribed conditions, it became an important question, at the date of the order, whether there should be a discrimination between vessels and cargoes belonging to citizens of the United States and vessels and cargoes belonging to neutral nations."

In the message to the House of Representatives of the twenty-fourth of July, 1848, it was stated that "it is from the same source of authority that we derive the unquestioned right, after the war has been declared by Congress, to blockade the ports and coasts of the enemy, to capture his towns, cities and provinces, and to levy contributions upon him for the support of our army. Of the same character with these is the right to subject to our temporal military government the conquered territories of our enemy. They are all belligerent rights, and their exercise is as essential to the successful prosecution of a foreign war as the right to fight battles."

By the constitution the power to "declare war" is vested in Congress, and by the same instrument it is provided that "the President shall be commander in chief of the army and navy of the United States," and that "he shall take care that the laws be faithfully executed."

When Congress have exerted their power, by declaring war against a foreign nation, it is the duty of the President to prosecute it. The constitution has prescribed no particular mode in which he shall perform this duty. The manner of conducting the war is

not defined by the constitution. The term *war*, used in that instrument, has a well understood meaning among nations. That meaning is derived from the laws of nations, a code which is recognized by all civilized powers, as being obligatory in a state of war. The power is derived from the constitution, and the manner of exercising it is regulated by the laws of nations. When Congress have declared war, they, in effect, make it the duty of the President in prosecuting it, by land and sea, to resort to all the modes, and to exercise all the powers and rights which other nations at war possess. He is invested with the same power in this respect as if he were personally present, commanding our fleets by sea or our armies by land. He may conduct the war by issuing orders for fighting battles, besieging and capturing cities, conquering and holding the provinces of the enemy, or by capturing his vessels and other property on the high seas. But these are not the only modes of prosecuting war which are recognized by the laws of nations, and to which he is authorized to resort. The levy of contributions on the enemy is a right of war well established and universally acknowledged among nations, and one which every belligerent possessing the ability may properly exercise. The most approved writers on public law admit and vindicate this right, as consonant with reason, justice and humanity.

No principle is better established than that "we have a right to deprive our enemy of his possessions, of everything which may augment his strength and enable him to make war. This every one endeavors to accomplish in the manner most suitable to him. Whenever we have an opportunity, we seize on the enemy's property, and convert it to our own use; and thus, besides diminishing the enemy's power, we augment our own, and obtain at least a partial indemnification or equivalent, either for what constitutes the subject of the war, or for the expenses and losses incurred in its prosecution; in a word, we do ourselves justice." "Instead of the custom of pillaging the open country and defenceless places," the levy of contributions has been "substituted." "Whoever carries on a just war has a right to make the enemy's country contribute to the support of his army, and towards defraying all the charges of the war. Thus he obtains a part of what is due to him; and the enemy's subjects, by consenting to pay the sum demanded, have their property secured from pillage, and the country is preserved."

These principles, it is believed, are uncontroverted by any civilized nation in modern times. The public law of nations by which they are recognized, has been held by our highest judicial tribunal as a code which is applicable to our "situation" in a state of war, and binding on the United States; while in admiralty and maritime cases it is often the governing rule. It is in a just war that a nation has the "right to make the enemy's country contribute to the support of his army." Not doubting that our late war with Mexico was just on the part of the United States, I did not hesitate, when charged by the constitution with its prosecution, to exercise a power common to all other nations, and Congress was duly in-



formed of the mode and extent to which that power had been and would be exercised, at the commencement of their first session, thereafter.

Upon the declaration of war against Mexico by Congress, the United States were entitled to all the rights which any other nation at war would have possessed. These rights could only be demanded and enforced by the President, whose duty it was, as "commander-in-chief of the army and navy of the United States," to execute the law of Congress which declared the war. In the act declaring war, Congress provided for raising men and money to enable the President "to prosecute it to a speedy and successful termination." Congress prescribed no mode of conducting it, but left the President to prosecute it according to the laws of nations, as his guide. Indeed, it would have been impracticable for Congress to have provided for all the details of a campaign.

The mode of levying contributions must necessarily be left to the discretion of the conqueror, subject to be exercised, however, in conformity with the laws of nations. It may be exercised by requiring a given sum, or a given amount of provisions to be furnished by the authorities of a captured city or province; it may be exercised by imposing an internal tax, or a tax on the enemy's commerce, whereby he may be deprived of his revenues, and these may be appropriated to the use of the conqueror. The latter mode was adopted by the collection of duties in the ports of Mexico, in our military occupation, during the late war with that republic.

So well established is the military right to do this under the laws of nations, that our military and naval officers, commanding our forces on the theatre of war, adopted the same mode of levying contributions from the enemy, before the order of the President, of the 31st of March, 1847, was issued. The general in command of the army at Vera Cruz, upon his own view of his powers and duties, and without specific instructions to that effect, immediately after the capture of that city, adopted this mode. By his order of the twenty-eighth of March, 1847, heretofore communicated to the House of Representatives, he directed a "temporary and moderate tariff of duties to be established." Such a tariff was established, and contributions were collected under it and applied to the uses of our army. At a still earlier period, the same power was exercised by the naval officers in command of our squadron on the Pacific coast. \* \* \* \* \*

Not doubting the authority to resort to this mode, the order of the thirty-first of March, 1847, was issued, and was, in effect, but a modification of the previous orders of these officers, by making the rates of contribution uniform, and directing their collection in all the ports of the enemy in our military occupation, and under our temporary military government.

The right to levy contributions upon the enemy, in the form of import and export duties in his ports, was sanctioned by the treaty of peace with Mexico. By that treaty, both governments recognized, \* \* \* and confirmed the exercise of that right. By its provisions, "the custom-houses at all the ports occupied by the

forces of the United States," were, upon the exchange of ratifications, to be delivered up to the Mexican authorities, "together with all bonds and evidences of debt for duties on importations and exportations *not yet fallen due*," and "all duties on imports and on exports collected at such custom-houses, or elsewhere in Mexico, by authority of the United States," before the ratification of the treaty by the Mexican government, were to be retained by the United States; and only the nett amount of the duties collected after this period, was to be "delivered to the Mexican government." By its provisions, also, all merchandise, "imported previously to the restoration of the custom-houses to the Mexican authorities," or "exported from any Mexican port, whilst in the occupation of the forces of the United States," was protected from confiscation and from the payment of any import or export duties to the Mexican government, even although the importation of such merchandise "be prohibited by the Mexican tariff." The treaty, also, provides, that should the custom-houses be surrendered to the Mexican authorities in less than sixty days from the date of its signature, the rates of duty on merchandise imposed by the United States, were, in that event, to survive the war, until the end of this period; and, in the meantime, Mexican custom-house officers were bound to levy no other duties thereon, "than the duties established by the tariff found in force at such custom-houses, at the time of the restoration of the same." The "tariff found in force at such custom-houses," which is recognized and sustained by this stipulation, was that established by the military order of the thirty-first of March, 1847, as a mode of levying and collecting military contributions from the enemy.

The right to blockade the ports and coasts of the enemy in war is no more provided for or prescribed by the constitution than the right to levy and collect contributions from him in the form of duties, or otherwise; and yet it has not been questioned that the President had the power, after war had been declared by Congress, to order our navy to blockade the ports and coasts of Mexico. The right in both cases exists under the laws of nations. If the President cannot order military contributions to be collected without an act of Congress, for the same reason he cannot order a blockade; nor can he direct the enemy's vessels to be captured on the high seas; nor can he order our military and naval officers to invade the enemy's country, conquer, hold and subject to our military government his cities and provinces; nor can he give to our military and naval commanders orders to perform many other acts essential to success in war.

If, when the city of Mexico was captured, the commander of our forces had found in the Mexican treasury public money which the enemy had provided to support his army, can it be doubted that he possessed the right to seize and appropriate it for the use of our own army? If the money captured from the enemy could have been thus lawfully seized and appropriated, it would have been by virtue of the laws of war, recognized by all civilized nations; and by the same authority the sources of revenue and of supply of the enemy

may be cut off from him, whereby he may be weakened and crippled in his means of continuing or waging the war. If the commanders of our forces, while acting under the orders of the President, in the heart of the enemy's country and surrounded by a hostile population, possess none of these essential and indispensable powers of war, but must halt the army at every step of its progress, and wait for an act of Congress to be passed to authorize them to do that which every other nation has the right to do by virtue of the laws of nations, then, indeed, is the government of the United States in a condition of imbecility and weakness, which must, in all future time, render it impossible to prosecute a foreign war in an enemy's country successfully, or to vindicate the national rights and the national honor by war.

The contributions levied were collected in the enemy's country, and were ordered to be "applied" in the enemy's country "towards defraying the expenses of the war," and the appropriations made by Congress for that purpose were thus relieved, and considerable balances remained undrawn from the treasury. The amount of contributions remaining unexpended at the close of the war, as far as the accounts of collecting and disbursing officers have been settled, have been paid into the treasury, in pursuance of an order for that purpose, except the sum "applied towards the payment of the first instalment due under the treaty with Mexico," as stated in my last annual message, for which an appropriation had been made by Congress. The accounts of some of these officers, as stated in the report of the Secretary of War, accompanying that message, will require legislation before they can be finally settled.

In the late war with Mexico, it is confidently believed that the levy of contributions, and the seizure of the sources of public revenue, upon which the enemy relied to enable him to continue the war, essentially contributed to hasten peace. By those means the government and people of Mexico were made to feel the pressure of the war, and to realize that, if it were protracted, its burdens and inconveniences must be borne by themselves. Notwithstanding the great success of our arms, it may well be doubted whether an honorable peace would yet have been obtained, but for the very contributions which were exacted.

JAMES K. POLK.

WASHINGTON, January 2, 1849.

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*To the Senate of the United States:*

In answer to the resolution of the Senate of the 1st instant, requesting to be informed whether "any taxes, duties, or imports" have been "laid and collected upon goods and merchandise belonging to the citizens of the United States, exported by such citizens from the United States to Mexico: and, if so, what is the rate of such duties, and what amount has been collected; and, also, by what authority of law the same have been laid and collected," I refer the Senate

to my annual message of the 7th of December last, in which I informed Congress that orders had been given to our military and naval commanders in Mexico to adopt the policy, as far as practicable, of levying military contributions upon the enemy for the support of our army.

As one of the modes adopted for levying such contributions, it was stated in that message, that "on the 31st of March last, I caused an order to be issued to our military and naval commanders to levy and collect a military contribution upon all vessels and merchandise which might enter any of the ports of Mexico in our military occupation, and to apply such contributions towards defraying the expenses of the war. By virtue of the right of conquest and the laws of war, the conqueror, consulting his own safety or convenience, may either exclude foreign commerce altogether from all such ports, or permit it upon such terms and conditions as he may prescribe.

"Before the principal ports of Mexico were blockaded by our navy, the revenue derived from import duties, under the laws of Mexico, was paid into the Mexican treasury. After these ports had fallen into our military possession, the blockade was raised, and commerce with them permitted upon prescribed terms and conditions. They were opened to the trade of all nations, upon the payment of duties more moderate in their amount than those which had been previously levied by Mexico; and the revenue which was formerly paid into the Mexican treasury was directed to be collected by our military and naval officers, and applied to the use of our army and navy. Care was taken that the officers, soldiers, and sailors of our army and navy should be exempted from the operations of the order; and as the merchandise imported, upon which the order operated, must be consumed by Mexican citizens, the contributions exacted were, in effect, the seizure of the public revenues of Mexico, and the application of them to our own use. In directing this measure, the object was to compel the enemy to contribute, as far as practicable, towards the expenses of the war."

A copy of the order referred to, with the documents accompanying it, has been communicated to Congress.

The order operated upon the vessels and merchandise of all nations, whether belonging to citizens of the United States, or to foreigners, arriving in any of the ports in Mexico in our military occupation. The contributions levied were a tax upon the Mexican citizens, who were the consumers of the merchandise imported; but, for the permit or license granted by the order, all vessels and merchandise belonging to citizens of the United States, were necessarily excluded from all commerce with Mexico from the commencement of the war. The coasts and ports of Mexico were ordered to be placed under blockade on the day Congress declared the war to exist; and, by the law of nations, the blockade applied to the vessels of the United States as well as to the vessels of all other nations. Had no blockade been declared, or had any of our merchant vessels entered any of the ports of Mexico not



blockaded, they would have been liable to be seized and condemned as lawful prizes by the Mexican authorities. When the order was issued, it operated as a privilege to the vessels of the United States, as well as to those of foreign countries, to enter the ports held by our arms upon prescribed terms and conditions. It was altogether optional with citizens of the United States and foreigners to avail themselves of the privileges granted upon the terms prescribed. Citizens of the United States and foreigners have availed themselves of these privileges.

No principle is better established than that a nation at war has the right of shifting the burden off itself, and imposing it on the enemy by exacting military contributions. The mode of making such exactions must be left to the discretion of the conqueror; but it should be exercised in a manner conformable to the rules of civilized warfare.

The right to levy these contributions is essential to the successful prosecution of war in an enemy's country, and the practice of nations has been in accordance with this principle. It is as clearly necessary as the right to fight battles, and its exercise is often essential to the subsistence of the army.

Entertaining no doubt that the military right to exclude commerce altogether from the ports of the enemy in our military occupation, included the minor right of admitting it under prescribed conditions, it became an important question at the date of the order, whether there should be a discrimination between vessels and cargoes belonging to citizens of the United States, and vessels and cargoes belonging to neutral nations. Had the vessels and cargoes belonging to citizens of the United States been admitted without the payment of any duty, while a duty was levied on foreign vessels and cargoes, the object of the order would have been defeated. The whole commerce would have been conducted in American vessels, no contributions could have been collected, and the enemy would have been furnished with goods without the exaction from him of any contribution whatever, and would have been thus benefitted by our military occupation, instead of being made to feel the evils of the war. In order to levy these contributions, and to make them available for the support of the army, it became, therefore, absolutely necessary that they should be collected upon imports into Mexican ports, whether in vessels belonging to citizens of the United States or to foreigners. It was deemed proper to extend the privilege to vessels and their cargoes belonging to neutral nations. It has been my policy, since the commencement of the war with Mexico, to act justly and liberally towards all neutral nations, and to afford to them no just cause of complaint; and we have seen the good consequences of this policy by the general satisfaction which it has given.

In answer to the inquiry contained in the resolution as to the rates of duties imposed, I refer you to the documents which accompanied my annual message of the 7th of December last, which contain the information.

From the accompanying reports of the Secretary of War and the

Secretary of the Navy, it will be seen that the contributions have been collected on all vessels and cargoes, whether American or foreign; but the returns to the departments do not show with exactness the amounts collected on American, as distinguishable from foreign vessels and merchandise.

JAMES K. POLK.

WASHINGTON, February 10, 1848.

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